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August 28, 2017

The Honorable Christopher Larsen
Administrative Law Judge
Office of Administrative Law Judges
90 7th Street, Suite 4-800
San Francisco, CA 94103

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Office of Administrative Law Judges
San Francisco, Ca

Re: *OFCCP v. Oracle America, Inc.*, Case No. 2017-OFC-00006

Dear Judge Larsen:

Pursuant to the Court's May 10, 2017 Order after Pre-Hearing Conference ("May 10, 2017 Order"), OFCCP requests that *Oracle's Motion and Memorandum of Points and Authorities in Support of Its Motion to Certify for Immediate Appeal to the Administrative Review Board This Court's Order Regarding the Temporal Scope of Litigation* be summarily denied for non-compliance with the Court's May 10, 2017 Order. The May 10, 2017 Order expressly stated:

[N]o party may file any motion with the court unless the parties first confer telephonically, with each other and with the court, in a good-faith effort to resolve the issues which are the subject of the proposed motion. The court will summarily deny any Motion filed in derogation of this Order.

Oracle first raised the issue of its potential appeal with OFCCP *today*, during a short telephone call. During the call, Erin Connell indicated that Oracle intended to file a letter with the court today, pursuant to the process set forth in the May 10, 2017 Order. She did not indicate that Oracle would subvert the Court's procedure and file a brief.


While Oracle claims ignorance as to whether "this sort of motion was intended to be included" in the May 10, 2017 Order, the order is clear that it applies to "any motion." In fact, the Court issued the May 10, 2017 Order after a variety of motions had been filed in the case, including Oracle's motion for judgment on the pleadings and Oracle's motion for summary judgment. So, the May 10, 2017 Order clearly applies to motions other than discovery motions, and indeed, expressly states that it applies to "any motions." The May 10, 2017 Order also clearly states that failure to comply with the order will result in summary denial of the motion. OFCCP requests that the Court do so.

If the Court does not follow through on the consequence stated in its May 10, 2017 for not complying with the Court's procedure, and instead determines that it will permit Oracle to file the motion it seeks, OFCCP requests a conference with the Court and a reasonable briefing schedule. OFCCP would be prejudiced if, after just learning about this issue today, Oracle's

brief were “deemed” filed today, as Oracle requests. Such a result would be particularly prejudicial given that Oracle did not comply with the Court’s May 10, 2017 Order setting forth the procedural requirements for filing motions in this case.

This Court could also deny the motion on the merits since it is apparent from the face of it that it is frivolous. Springing this motion on OFCCP and the Court appears to be a last ditch Hail Mary to avoid producing data and is consistent with Oracle’s numerous delay tactics. Oracle concedes in its brief filed in contravention of this Court’s order that it is not entitled to an interlocutory appeal unless there is substantial ground for difference of opinion on a controlling question of law and an immediate appeal would materially advance the litigation. As was fleshed out thoroughly in OFCCP’s previous briefing on this issue, this Court’s finding on the temporal scope of liability is dictated by binding precedent and consistent with numerous other cases. *See OFCCP v. Honeywell, Inc.* (“Honeywell I”), 77-OFCCP-3, 1993 WL 1506966, *7 (Sec’y, June 2, 1993); *OFCCP v. Uniroyal, Inc.*, 77-OFCCP 1 at *10 (Sec’y June 28, 1979) affirmed by *Uniroyal, Inc. v. Marshall*, 482 F. Supp. 364, 372 (D.D.C. 1979); *OFCCP v. JBS USA Holdings, Inc.*, 2015-OFC-1, at p. 2, 5 (Apr. 15, 2016); *OFCCP v. JPMorgan Chase & Co.*, 2017-OFC-7, 6 (April 5, 2017); *OFCCP v. Enterprise RAC Co. of Baltimore*, 2016-OFC-6 (Aug. 8, 2016); *OFCCP v. Bank of America*, 2010 WL 10838227, at *61 (DOL ALJ Jan. 21, 2010); *U.S. Department of Labor v. Jacksonville Shipyards Inc.*, 89-OFC-1 (March 10, 1989); *OFCCP v. Volvo GM Heavy Truck Corp.*, 1996-OFC-2, 1998 WL 34373222 (ALJ, April 27, 1998); *OFCCP v. Harris Trust & Savings Bank*, 78-OFC-2, 1988 WL 1109173 (Sept. 23, 1988); *Equal Employment Opportunity Comm’n v. Hickey-Mitchell Co.*, 372 F. Supp. 1117, 1121 (E.D. Mo. 1973); *see also OFCCP v. Bank of America*, ARB Case No. 13-099, 2016 WL 2892921 (Apr. 16, 2016)(concurring opinions of Judge Royce and Judge Brown specifically finding continuing violation liability and discovery appropriate). Because OFCCP only seeks information and liability on continuing violations, the ruling is not a “controlling question of law” but really only goes to the extent of the damages. Moreover, immediate appeal does not speed up the resolution of this matter, which will need to be litigated anyway, but instead will only significant delay these proceedings.

Respectfully,

By: 
LAURA C. BREMER
Senior Trial Attorney